



POLICE DEPARTMENT

March 31, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Leonard Wright
Tax Registry No. 880474
70 Precinct
Disciplinary Case No. 81483/06

The above-named member of the Department appeared before me on August 21, 2007, October 22, 2007 and December 10, 2007 charged with the following:

1. Said Police Officer Leonard Wright, while assigned to 76 Precinct, on or about December 17, 2004, at about 1130 hours, was discourteous to New York City Police Sergeant Robert Sorrenti, to wit: when Sergeant Sorrenti requested that Officer Wright take paperwork to the Borough, Officer Wright responded in a belligerent and hostile manner, "I can't do it, I am on meal" and then walked away from the Sergeant as he was being spoken to. (*As Amended*)

PG 203-09 Pg. 1 Para 2 GENERAL REGULATIONS

The Department was represented by Krishna O'Neal, Esq., Department Advocate's Office, and the Respondent was represented by Stephen Worth, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge and a stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeants Robert Sorrenti (Retired) and John M. Schwartz; Lieutenant John J. Smith and Deputy Inspector Joseph Cassidy as its witnesses.

The Department offered into evidence a two-page document prepared on December 17, 2004, which is the Supervisor's Complaint Report/Command Discipline Election Report for the Respondent, Command Serial Number 18 [Department's Exhibit (DX) 1]. DX 2 is a 15-page document which is photocopies of the Roll Call, Command Log and Interrupted Patrol Log for the 76 Precinct for December 17, 2004. DX 4 is a photocopy of a New York City Police Department Omniform Arrest Report for Chain Teitelbaum for Bribery of a Public Servant on July 24, 2003. DX 5 is a photocopy of a New York City Police Department Omniform Arrest Report for Shalom Minsky for Bribery of a Public Servant on July 24, 2003. Also received in evidence is Court Exhibit (CX) 1, a two-page document prepared on October 17, 2007 which is a Department Advocate's Office Investigating Officer's Report.

Sergeant [REDACTED]

[REDACTED] is a resident of [REDACTED] County who owns his own vending machine business. He testified that he retired from the Department on April 28, 2007 as a sergeant after 20 years of service. He said that his last assignment was as a sergeant in the 76 Precinct where he worked as a patrol supervisor, a desk sergeant and as the training coordinator who trained police officers in the command.

[REDACTED] testified that he met the Respondent in the summer of 2002 when the Respondent was administratively transferred to the 76 Precinct after spending 19 years at the 70 Precinct. He

said that he had no problems with or concerns about the Respondent for the first year the Respondent was assigned to the 76 Precinct. [REDACTED] stated that he did not have a personal relationship with the Respondent. He stated that once the Respondent was assigned to the 76 Precinct, the commanding officer designated the Respondent to be the driver for the supervisors in the command. [REDACTED] stated that an incident took place in 2003 between himself and the Respondent which led him to contact Roll Call and to ask that the Respondent no longer be assigned as his operator.

[REDACTED] testified that he disagreed with how the Respondent handled a particular situation. He explained that in 2003 he and the Respondent were involved in a radio motor patrol car (RMP) accident. The owner of the company whose car was involved in the accident offered him and the Respondent "\$400, cosmetics and jewelry for themselves, wives and friends." [REDACTED] said this was a completed bribery because \$400 was offered and given to them; so he ordered the Respondent to arrest the owner for bribery. [REDACTED] stated that their professional relationship changed because he no longer wanted the Respondent to be his driver. He also stated that the Respondent was not happy that he was no longer his operator. He said that the Respondent began to spread rumor and innuendo in the command that he [REDACTED] was a "rat." [REDACTED] said that the Respondent would no longer show him the respect he was supposed to show him as a supervisor and that the Respondent would not follow his orders.

[REDACTED] testified that on December 17, 2004 at approximately 11:00 a.m., he was working as the patrol supervisor in the 76 Precinct. He was monitoring the radio at that time and noted that he had two sectors on patrol. He heard the Desk Officer, Sergeant Burns, call one of the sectors in from patrol. When he inquired, he learned that a Lieutenant Hochmeister had a package that needed to be delivered to the chief of the Borough. [REDACTED] explained that since

Burns was a new sergeant, he thought he would go back to the station house and discuss with her who else could be sent to deliver the package. He felt that it would not be safe to only have one sector covering patrol.

██████████ said that he went back to the command. He reviewed the Roll Call with Burns and they decided that since the Respondent was performing non-essential work at the time, it would be better if he were the person sent to the Borough to deliver the package. ██████████ asked Burns where the Respondent was and she did not know. ██████████ said he went in the office where the Respondent is usually located, but he was not there. He sent a police officer to check the lounge, but he was not there either. ██████████ said he checked the Command Log to see if the Respondent had another assignment. He also checked the Interrupted Patrol Log to see if the Respondent was out on his meal break, but there was no record of him in the logs. He asked Burns if the Respondent was out on meal and she said that he was not. ██████████ stated that he then called the Anti-Crime supervisor, Sergeant John Schwartz who was out on patrol to see if he knew where the Respondent was. Schwartz informed him that he did not know where the Respondent was, but he had his cell phone number and he would contact him.

██████████ testified that Schwartz called him back and informed him that the Respondent said he was "arming an AWOL" and would not be able to accept the assignment. ██████████ said Schwartz came back to the station house and they discussed the Respondent. ██████████ said that he advised Schwartz that he would call the Respondent and order him in. He explained to Schwartz that he had a problem with the Respondent being insubordinate to him and refusing to comply with his orders. He further explained that he would offer the assignment to the Respondent and if he refused the assignment, he would write him up for a Command Discipline

(CD). [REDACTED] asked Schwartz to be at the desk when the Respondent came into the station house to be a witness when he refused the assignment.

Eventually the Respondent entered the station house while [REDACTED] Schwartz and Burns were behind the desk. [REDACTED] testified that there were other people in the station house. He stated that he asked the Respondent, "Can you take this package for the lieutenant to the Borough, to the chief?" The Respondent replied, "I can't do it." When [REDACTED] asked him why he could not do it, the Respondent retorted, "I am on meal." [REDACTED] said that the Respondent's tone was loud and belligerent, while he ([REDACTED]) was speaking in a normal tone of voice. The Respondent then turned his back and repeated, "I can't do it, I'm on meal." [REDACTED] asked the Respondent two to three times to deliver the package. The Respondent said that he had 15 minutes left to his meal. [REDACTED] said that eventually the Respondent did deliver the package, but he could not recall exactly when. [REDACTED] stated that when the Respondent came back from delivering the package, he called him a "jerk-off." [REDACTED] testified that he did issue a CD to the Respondent. His Commanding Officer, Inspector Joseph Cassidy sat down with the Respondent and offered him a penalty of 21 days and a transfer.

During cross-examination, [REDACTED] acknowledged that he brought a lawsuit against the City of New York and the City was found liable. When asked whether he was awarded a judgment in the amount of \$500,000.00, he said that he did not think it was relevant. When probed on the matter, [REDACTED] said that he did not receive any money judgment from the City. He stated that the City had a right to appeal and to date; the City had not filed an appeal yet.

With regard to the 2003 bribery case, [REDACTED] admitted that the incident concerned a car hitting his police car. He could not recall how much damage was done to the police car. He acknowledged that the owner came to the scene and offered cash to repair the damage to the car

and cosmetics if they wanted to come to his store and get it. [REDACTED] said that he took the \$400.00 that was offered and considered the case a completed bribery. When questioned about whether jewelry was also offered, [REDACTED] said he made a mistake when he mentioned an offer of jewelry during his direct examination.

[REDACTED] acknowledged that the Respondent did not want to make the arrest because he did not think the man committed bribery. The Respondent thought that the man believed he could pay for the damages and avoid his insurance going up. [REDACTED] said that as he prepared his police report, the civilian wanted him to tear up the report and he explained to him that he had to make a police report of the incident. [REDACTED] denied saying that the civilian offered the money to pay for the car damage. He said the civilian offered the money to him. After a read back of the trial transcript, [REDACTED] acknowledged that he said during direct examination that the civilian offered to pay for the car damage.

[REDACTED] said the conversation prior to the arrest was recorded. He asked a civilian named [REDACTED] to call his cell phone while he left his cell phone on. He notified "Department Inspection Services" who in turn notified the telephone company. [REDACTED] stated that the conversation was recorded on his cell phone voicemail and later recorded onto a cassette tape. [REDACTED] said the cassette tape was vouchered by the Respondent who received the property to later deliver it to the District Attorney's (DA) Office. He also said that when the Respondent brought the property down to the DA, somehow the tape was destroyed. [REDACTED] admitted that he was alleging that the Respondent destroyed the tape. [REDACTED] stated that the bribery case was later dismissed.

[REDACTED] initially said he called the Internal Affairs Bureau (IAB) in regard to the destruction of the tape. He later said the matter was reported to IAB by the 76 Precinct

Commanding Officer, Deputy Inspector Joseph Cassidy. [REDACTED] said he informed Cassidy about the destruction of the tape. [REDACTED] stated that Cassidy was present during a conversation he had with IAB. [REDACTED] did not know the date of his interview with IAB.

[REDACTED] testified that storekeepers and community leaders on Court and Smith streets all told him that the Respondent had a "hit out on me." [REDACTED] testified that a man named [REDACTED] told him that the Respondent put a hit out on him. [REDACTED] said that a woman told him that [REDACTED] was informed by [REDACTED] (the Respondent's [REDACTED]) that the Respondent would pay a sum of money to have someone "back [bat] me out while I am coming out of a bar."

[REDACTED] also testified that he does not know where [REDACTED] is or what [REDACTED] does. [REDACTED] said the name of the woman is [REDACTED] and she is available. [REDACTED] indicated that he does not know what happened after he reported this matter to the Department. [REDACTED] also stated that the Respondent made threats against him over the telephone. [REDACTED] acknowledged that the Respondent had never been arrested with respect to any of the allegations he made against him. [REDACTED] said he is not aware of any actual attempt on his own life.¹

With regard to the discourtesy allegation, [REDACTED] testified that he decided to issue the CD to the Respondent because of the way he spoke to him. He explained that he was the supervisor who gives orders, but the Respondent acted as if he was telling him that he was on meal. [REDACTED] acknowledged that when the Respondent was offered a CD with 21 days and a transfer he did not know what that meant. He assumed it meant a loss of 21 vacation days and a transfer. He stated that he was not sure whether it meant a transfer for 21 days. [REDACTED]

¹ Based on [REDACTED]'s allegations against the Respondent of harassment and threats on his life, the Respondent's attorney requested a determination to establish whether IAB logs were actually made by [REDACTED]. During the course of this trial, this Court directed that a review of the logs be made to ascertain whether such complaints were reported. A review of the IAB logs was made by an investigator in the Department Advocate's Office, Litigation Support Unit. Several IAB logs were filed by [REDACTED] against the Respondent and a review of the records indicated that there was an extensive history of complaints between the two of them (See CX 1). Complaints ended in either further investigation or forwarding of the matter to the Office of Equal Employment Opportunity.

acknowledged that the Respondent was the only police officer who he ever issued a CD to. He stated that he may have issued more than one CD to the Respondent.

Lieutenant John J. Smith

Smith, a member of the Department for 21 years, is currently assigned to the 76 Precinct as the Integrity Control Officer (ICO). He explained that he handles the process of adjudicating CDs. He stated that when a supervisor decides to issue a CD to a member of the service, the supervisor completes a form which is eventually turned over to the ICO. He said that he assigns the CD a number chronologically beginning at the first of a new year. The CD is then handed back to the commanding officer who will adjudicate the CD. Smith explained that if the member of the service does not accept the findings of the CD, the case is forwarded to the Department Advocate's Office for disposition.

Smith testified that he has known the Respondent since he was first assigned to the 76 Precinct. He described his relationship with him as friendly. Smith said he knew [REDACTED] and described his relationship with him as professional. Smith stated that he was involved in the issuance of a Schedule A CD to the Respondent dated December 17, 2004 (DX 1). Smith said the CD alleged that the Respondent was disrespectful and discourteous to [REDACTED]. Smith testified that Cassidy, 76 Precinct Commanding Officer, directed him to commence an investigation into the circumstances surrounding the CD after the Respondent declined to accept the recommended penalty for the disposition of the CD.

Smith testified that he commenced his investigation by examining the Roll Call, Interrupted Patrol Log and Command Log for December 17, 2004 (DX 2). According to Smith, the Roll Call indicated that only two sectors and one conditions car were working during the day

tour. Smith concluded that if one sector had gone to the Borough, there would have been only one sector available to cover patrol. Smith said he interviewed Sergeants [REDACTED], Burns and Schwartz as well as Police Officers Wright and O'Hare during the course of his investigation. Smith concluded that the Respondent's statements to [REDACTED] were "disrespectful and discourteous."

Smith said he weighed the statements of Sergeants Schwartz and [REDACTED] against the statements of Sergeant Burns and Officer O'Hare. Smith testified that Officer O'Hare was the same rank as the Respondent. Smith said that Sergeants Schwartz and [REDACTED] felt that the Respondent was disrespectful and discourteous. Smith stated that Sergeant Burns felt that the Respondent was not disrespectful and discourteous. Smith testified that he felt the statements of Sergeants [REDACTED] and Schwartz had more weight because they had more time in rank than Sergeant Burns. Smith stated that he felt Sergeant Burns might identify with police officers and might not be able to comprehend what a discourteous remark is due to her lack of time in the rank of sergeant.

Sergeant John M. Schwartz

Schwartz, a member of the Department for 14 years and a sergeant for 6 years, is currently assigned to the 76 Precinct as the field training unit sergeant. Schwartz is also the Sergeant's Benevolent Association (SBA) Delegate for the 76 Precinct.

Schwartz testified that on December 17, 2004, [REDACTED] conferred with the desk sergeant and reviewed the command's Roll Call. [REDACTED] stated that he was unclear whether the Respondent was actually on meal at the time because the logs in the command did not document

his meal. [REDACTED] also decided that the Respondent would be the best person to take the package to the Borough otherwise the precinct would be left with only one sector performing patrol.

Schwartz stated that the Respondent entered the station house and was informed by [REDACTED] that he needed to take a package to the borough. Schwartz said [REDACTED] spoke in an "even" tone and was "professional." The Respondent replied that he was on meal and that he would take the package when he finished as he proceeded to walk away. Schwartz described the Respondent's tone as being, "loud, frustrated and disrespectful." He said that he was present at the desk and so was the desk sergeant. He could not recall anyone else being present at the desk.

Schwartz testified that prior to the Respondent entering the command, [REDACTED] said words to the effect, "I have Officer Wright." He explained that [REDACTED] said that if the Respondent takes the package without hesitation everything will be all right, but if the Respondent gives him a hard time, he will issue him a CD. Schwartz stated that he did not think [REDACTED] was singling out the Respondent to harass him. Schwartz noted that when he contacted the Respondent, he told him that [REDACTED] was looking for him. The Respondent asked why he was looking for him and Schwartz responded, "Let's just do this, be professional, go in there, take it and go; no questions asked." Schwartz explained that he just wanted to give the Respondent a "head's up." He expected the Respondent to walk into the command, take the package without hesitation and say nothing.

During cross-examination, Schwartz acknowledged that [REDACTED] never said the package was time sensitive and had to be delivered right away. Schwartz admitted that the Respondent has a loud voice normally that can fill a room. He admitted to hearing [REDACTED] make the allegation that after the Respondent returned from the borough, he called [REDACTED] a "jerk-off."

Schwartz said he did not hear the Respondent make the comment. He also said that he did not know of anyone else who heard the comment other than [REDACTED]

During redirect examination, Schwartz admitted that he had spoken to the Respondent in the past about his loud tone of voice. He said that the Respondent did not ask permission to go to the bathroom or to complete his meal, he stated, "I am still on meal. I have 15 more minutes."

Deputy Inspector Joseph Cassidy

Cassidy, a member of the Department for 21-and a-half years, is currently the Commanding Officer of the Community Affairs Outreach Unit. Cassidy was the Commanding Officer of the 76 Precinct from 2004 through 2006.

Cassidy testified that after a supervisor draws up a CD he would then sit down with that supervisor and discuss what happened. He stated that he would discuss what transpired with any witnesses. He would then determine if the complaint was going to be substantiated or unsubstantiated. Cassidy stated that if the CD was substantiated he would sit down with the supervisor who wrote the CD and discuss what type of penalty that supervisor was looking for. Cassidy said he feels that every case is different and that the supervisor who wrote the CD should feel like he or she had a hand in what the punishment was.

Cassidy testified that he has known the Respondent for 21 years since they were police officers together. He found him to be very dedicated and professional. He stated that they had a friendly, professional relationship with each other and as a supervisor, he had no problems with the Respondent.

Cassidy stated that on February 1, 2005 he became involved in the issuance of a CD to the Respondent. [REDACTED] had drafted a CD that the Respondent was discourteous and

disrespectful toward him while receiving an assignment (DX 1). As was his practice, Cassidy said he sat down with [REDACTED] who stated that he felt that as a supervisor, especially with an incident like this in the presence of other supervisors, something had to be done about the Respondent's behavior. Cassidy said that [REDACTED] did not want a harsh punishment, but he felt that there had to be some sort of punishment. Cassidy also said that [REDACTED] asked if "there is another way that we could make the same point?" He explained that he took into consideration [REDACTED]'s opinion and the fact that the Respondent was one of the most experienced and competent police officers. He said that he proposed a penalty to change the Respondent's assignment from school crossing guard coordinator to patrol for 21 days. He stated that the Respondent did not think that his own conduct rose to the level of discourtesy. Cassidy explained to the Respondent that no one was looking to hurt him, but that he could not allow someone to be disrespectful to a supervisor in front of the desk.

Cassidy said that the Respondent's attorney mentioned that [REDACTED] and the Respondent were involved in some civil litigation. The Respondent, according to Cassidy, alleged that [REDACTED] singled him out for unfair treatment. Cassidy said he concluded that [REDACTED] did not single out the Respondent. Cassidy stated that he based his conclusion on conversations with Sergeants Schwartz and Burns, the day tour lieutenant, as well as other supervisors. Cassidy said he was aware of issues between [REDACTED] and the Respondent regarding a bribery arrest. Cassidy also said that he was not aware of any other police officer ever written up by [REDACTED].

Cassidy could not recall if either [REDACTED] or the Respondent ever complained about personal problems they had with one another. Cassidy testified that he notified IAB that [REDACTED] stated he had been receiving threats. The matter was then handled by IAB. IAB determined that [REDACTED]'s complaint regarding the threatening phone calls was unsubstantiated.

Cassidy stated that he was aware of the fact that S [REDACTED] was suing the Police Department, Chief Hall and several other individuals, all of whom were ranking officers. Cassidy said he worked for Chief Hall in Community Affairs for the year prior to his arrival at the 76 Precinct. Cassidy said he was aware of [REDACTED]'s lawsuit while he was investigating the circumstances surrounding the CD issued to the Respondent. Cassidy also said the lawsuit had no bearing on his adjudication of the CD and he stayed away from making reference to the lawsuit in adjudicating the CD.

The Respondent's Case

The Respondent called Inspector Thomas Harris, Sergeants Sharon Burns and Gino Chillo as witnesses. The Respondent testified in his own behalf.

Inspector Thomas Harris

Harris, a member of the Department for 22-and-a-half years and an Inspector for 18 months, is currently the Commanding Officer of the 70 Precinct. Harris said he was assigned to the 76 Precinct in April of 2002 as the Commanding Officer. Harris said he never had a good relationship with [REDACTED] while he was assigned to the 76 Precinct.

Harris stated that he directed "constructive criticisms" at [REDACTED] after a situation involving a barricaded emotionally disturbed person. Harris testified that from that point on, [REDACTED] would communicate with him via other supervisors instead of coming to him directly. Harris said that certain matters should have been brought to his attention directly. He testified that he heard about the Respondent's bribery arrest from the Respondent, not [REDACTED] who was a supervisor under his supervision.

Harris stated that § 87(2)(b) lacked the communication skills a supervisor should have. Harris said in a deposition related to § 87(2)(b)'s lawsuit, that § 87(2)(b) was not a team player and was only out for himself. Harris recalled an instance in which he arrived at work, signed in the command log and asked § 87(2)(b) if anything was going on. § 87(2)(b) said, "No." § 87(2)(b) was the desk officer that day. Harris then entered his office and was informed of the fact that there was writing on a bathroom wall. The writing was about § 87(2)(b) and § 87(2)(b) was threatening to go to the Office of Equal Employment Opportunity or IAB. Harris said § 87(2)(b) should have apprised him of the situation when he walked into the station house.

Harris testified that after his arrival at the 76 Precinct he learned that § 87(2)(b) had requested a transfer to the 61 Precinct. Harris called the Borough and asked how § 87(2)(b)'s request to transfer was proceeding. The Borough told him that § 87(2)(b) had a past incident and that the transfer was not going to occur.

Harris said § 87(2)(b) never issued a CD to the Respondent while he was the Commanding Officer of the 76 Precinct. He testified that a CD was issued to the Respondent by § 87(2)(b) on February 10, 2004 a day after he was reassigned to the 78 Precinct on February 9, 2004. Harris said he believed that § 87(2)(b)'s problems with the Respondent were personal. Harris also said he would not have allowed a supervisor to use the disciplinary process and the issuance of a CD to settle a personal problem.

During cross-examination, Harris testified that he recalled endorsing an evaluation of Sergeant § 87(2)(b) written by Lieutenant Miranda in June of 2002. The evaluation stated that § 87(2)(b) had an "...excellent rapport with his subordinates...." The evaluation also stated that "... § 87(2)(b) had a sense of moral obligation, a sense of duty and strict personal honesty." Harris

said that he did not know [REDACTED] during the time period covered by the evaluation. Harris also said the evaluation was overdue.

Harris testified that he had a friendly relationship with the Respondent at the 70 Precinct and was not unhappy that both he and the Respondent were assigned to the 76 Precinct. Harris also testified that he and the Respondent as well as their respective families have socialized together off-duty.

Harris said the Respondent had discussed his feelings about [REDACTED] with him. Harris acknowledged that he was no longer assigned to the 76 Precinct when the December 17, 2004 incident occurred and therefore he had no direct knowledge as to what transpired. Harris stated that his only source of information regarding that occurrence was the Respondent. He also stated that he had not discussed with [REDACTED] either the incident in February or December of 2004. Harris said he did not feel that [REDACTED] should have issued the CD that is the source of contention in this trial.

Harris admitted that he spoke with someone in the Department Advocate's Office and they offered the Respondent the CD a second time. Harris stated that he would have tried to persuade the Respondent to accept a CD. The Respondent could also have been warned and admonished on the CD. Harris said that he personally would have accepted a Warn and Admonish rather than proceed to a Departmental Trial. He testified that the Respondent turned down the CD a second time.

Harris said he discussed [REDACTED] with Chief Hall. Chief Hall, according to Harris, was looking to have [REDACTED] come work for him in the Community Affairs Bureau. Harris said he informed Chief Hall that [REDACTED] did not hold himself up to the same standards that he asked of his subordinates. Harris stated that he informed Chief Hall that [REDACTED] would come in late and

then admonish his officers for being late to roll call. Harris had also stated that Lieutenant Alverado initially brought the issue of [REDACTED]'s tardiness to his attention. Harris said he directed Alverado to address the issue. Harris testified that he had no first-hand knowledge of [REDACTED]'s lateness problem or the hypocritical way in which he addressed lateness issues with subordinate officers. Harris also testified that he received this information after signing off on Miranda's evaluation of the Respondent.

Harris said he did not recall endorsing an evaluation of Sergeant [REDACTED] dated February 3, 2004, in which he said [REDACTED] "...performs his job well, he always stresses tactics to his officers and he looks out for them." He acknowledged that his signature was on the document presented to him in court. He testified that the document presented to him in court was not dated. Harris stated that he would like to see the original document. There was a line through the comment section on the copy of the evaluation presented to him in court. Harris stated that this sometimes happens when documents are copied. Harris testified that Alverado prepared the evaluation. Harris admitted that he did not ask Alverado to include references to [REDACTED]'s tardiness in his evaluation. He acknowledged that he highly recommended [REDACTED] for a transfer to Highway.

Harris also acknowledged that [REDACTED] put in several transfer requests while assigned to the 76 Precinct. Harris stated that he did not want to interfere with [REDACTED]'s transfer request since he did not get along with [REDACTED]. He said that he believed the Department as a whole would benefit if [REDACTED] was working somewhere he actually wanted to be. Harris also stated that there were times when [REDACTED]'s actions warranted commendation or recognition.

Harris acknowledged that he had a conversation about [REDACTED] with Chief Hall. He stated that Hall was looking to have [REDACTED] work with him in Community Affairs. Harris stated

that he informed Hall that [REDACTED] had an incident in the past and that he should look into it. He also advised Hall that he did not have anything favorable to say about [REDACTED]. Harris said he told Chief Hall that the Commanding Officer of the Task Force would be a better person to ask regarding this incident. Harris acknowledged that he had only known [REDACTED] for one month at the time of his conversation with Chief Hall.

Sergeant Sharon Burns

Burns, a 13-year member of the Department is currently assigned to the Internal Affairs Bureau. She stated that she has been in the rank of sergeant for the past three years. On December 17, 2004, she was working a day tour as the desk sergeant. She testified that the Respondent entered the command and was told by [REDACTED] to take a package down to the Borough. The Respondent informed [REDACTED] that he was still on meal, that he had to use the bathroom and that he needed about 15 minutes. [REDACTED] then told the Respondent that he needed the package immediately transported. The Respondent stated that he would finish using the bathroom and then take the package down to the Borough. Burns said that she was paraphrasing the conversation. She stated that she did not take notes about the incident. She testified that she did not think the Respondent was disrespectful, discourteous or unprofessional in the manner he was speaking to [REDACTED].

During cross-examination, Burns acknowledged that she had only been in the rank of sergeant for approximately three months when the package incident took place. She said that she recalled having a conversation with [REDACTED] who stated that he did not want the sectors delivering the package; he wanted the Respondent to deliver it. She stated that [REDACTED] asked her where the Respondent was and she informed him that he was out to meal. Burns admitted

that she did not put the Respondent's name in the Interrupted Patrol Log to record that he was out to meal. Burns recalled that it was a busy day in the command on the incident date. She recalled that Schwartz was present in the command, but she did not recall whether or not he was at the desk at the time the Respondent entered the station house.

Burns recalled that the Respondent was speaking in a loud voice when responding to [REDACTED] but she said that he always speaks that way because he is a loud person. Burns acknowledged that she stated in her Official Department Interview that she had never seen [REDACTED] single out the Respondent for unfair assignments.

During redirect examination, Burns stated that she was unaware of any urgency with respect to delivering the package to the Borough. She explained that even though the Respondent was on meal, he was still available to transport the package.

Sergeant Gino Chillo

Chillo, a member of the Department for 19 years and a Sergeant for nine years, is assigned to the 76 Precinct where he has been assigned since his promotion to the rank of sergeant. Chillo testified that [REDACTED]'s relationship with the Respondent was friendly until July 2003 when [REDACTED] ordered the Respondent to make a bribery arrest. Chillo acknowledged that he was not present on the day of the bribery arrest and therefore had no direct knowledge of the circumstances surrounding the arrest. Chillo also acknowledged that he was not present when [REDACTED] asked the Respondent to transport the package to the Borough.

Chillo said he was trying to mediate the dispute between [REDACTED] and the Respondent. Chillo said he asked the Respondent to call [REDACTED] and asked [REDACTED] to call the Respondent. Chillo stated that [REDACTED] responded by saying in sum and substance, "If you are not with me,

you are against me. Have him give me a call. If he does not call it is over." Chillo stated that he believed [REDACTED] would terminate his friendship with the Respondent if the Respondent did not call [REDACTED]. He did not think that the Respondent ever called [REDACTED]. Chillo stated that the Respondent stopped serving as [REDACTED]'s operator around the time of the bribery arrest. Chillo also said the Respondent was the steady sergeant's operator on the day tour.

During cross-examination, Chillo acknowledged that the Respondent told him that he was not happy about being directed to make the bribery arrest. He said the Respondent also mentioned that he did not like [REDACTED]. Chillo said that he was likely present when the Respondent made disparaging comments about [REDACTED] in front of a woman named [REDACTED]. However, he could not remember any statements where the Respondent said in the presence of [REDACTED] that he wanted [REDACTED] dead. [REDACTED] owned a shop in the confines of the 76 Precinct.

Chillo denied failing to respond to a "10-13" [officer in urgent need of assistance] called by [REDACTED] and his operator. He stated that he and his operator were completing an accident report when a radio run of a dispute came over the air. He also denied that [REDACTED] transmitted a "10-13" in regard to this dispute. Chillo said the 911 tapes showed that [REDACTED] never called a "10-13." Chillo stated that he and his operator was the only unit that did respond to the scene where [REDACTED] was. Chillo explained that an investigation was commenced regarding an allegation made by [REDACTED] that no units responded to his "10-13." He further explained that he presented paperwork at his in-house hearing to show that he was at the scene of an accident at the time of the radio run. Chillo said that he was exonerated of any wrongdoing by the 76 Precinct Commanding Officer. Chillo said that [REDACTED]'s driver stated that [REDACTED] was fabricating allegations of not responding to this incident.

Chillo said that after [REDACTED] filed his lawsuit against the Department "...it seems like he thought everybody turned against him, and he was basically lashing out allegations against everyone for every little thing." Chillo acknowledged that he had no personal knowledge of [REDACTED] making false allegations against other members of the service which resulted in exoneration. He said he was only aware of [REDACTED]'s suit against the city, [REDACTED]'s accusations in regards to the "10-13" and [REDACTED]'s dispute with the Respondent.

Police Officer Leonard Wright

The Respondent, a 24-year member of the Department, is currently assigned to the 70 Precinct. He stated that he was assigned to the school crossing guards as well as in charge of the vehicles in the 76 Precinct on December 17, 2004. He said he was never assigned to patrol that day. The Respondent stated that he thinks his meal time was 12:00 p.m. The Respondent testified that Burns, the Desk Officer, was aware of the fact that he began his meal period approximately 15 minutes past either 11:00 a.m. or 12:00 p.m. He stated that a supervisor was supposed to put his name in the Interrupted Patrol Log, but he learned from hearing Burns testify that she did not put his name in that log.

With respect to the incident on December 17, 2004, the Respondent said he was on meal. He returned to the 76 Precinct where he saw Sergeant [REDACTED] [REDACTED] asked him to take a package to the Borough. The Respondent said, "Yes, but I am still on meal. Is it okay if I finish out my meal"? The Respondent said that his tone of voice was naturally loud. He also said that he respected the rank of sergeant. He stated that [REDACTED] who spoke in a normal tone, asked him where his sandwich was. The Respondent said he replied that he finished his meal. [REDACTED] responded that since he finished his meal, he could take the package to the Borough. The Respondent replied by asking if he could go to the bathroom. He said that he told [REDACTED] that

that was why he returned to the station house. S [REDACTED] then asked in an argumentative tone of voice, "[D]oes it take 15 minutes to use the bathroom?"

The Respondent testified that he eventually took the package to the Borough. He stated that there was no mention of him being issued a CD that day. He said that he learned on a later date that a CD would be issued, but he refused to accept it because he was not discourteous to a supervisor. The Respondent said that initially he was offered a penalty of four hours. He was then offered a penalty of driving a day tour platoon commander, who was a friend of his, for 15 hours, which he refused. He was then offered a "warn and admonish," which he also refused to accept.

The Respondent stated that his relationship with [REDACTED] changed as a result of a bribery arrest which may have occurred on July 24, 2003. He explained that he and [REDACTED] were sitting in an RMP when a truck hit the RMP. The truck driver contacted his boss who came to the scene and offered to pay for the damage to the RMP. [REDACTED] decided to have the man arrested for bribery. The Respondent testified that in his years as a police officer, he has seen people try to settle their matters on the street, the only difference was this time, the driver hit a police car. He stated that the driver did not offer money to him and [REDACTED] personally, he offered to pay for the damage to the RMP and he did not consider that to be bribery. The Respondent said that he expressed to [REDACTED] that he did not think the case was a bribery case and that the man did not know what he was doing. The Respondent stated that he did not think [REDACTED] liked his opinion on this matter.

The Respondent explained that despite his feelings on the bribery case, the arrest went forward. He testified that [REDACTED], a supervisor, ordered him to make the bribery arrest and he did. He stated that he had no discretion with respect to making that arrest. He also stated that

the last he heard of the case, he was contacted by the Assistant District Attorney (ADA) assigned to the case who asked him if he was opposed to having the case reduced to a Disorderly Conduct. The Respondent said he advised the ADA that he had no objection to that.

During cross-examination, the Respondent denied that Schwartz told him to report back to the station house to do what a supervisor wants him to do. He stated that Schwartz told him [REDACTED] was turning the station house upside down looking for him and he told Schwartz that he was on meal. The Respondent said that he reported to the station house on his own initiative.

The Respondent stated that he asked permission from [REDACTED] to complete his meal and to go to the bathroom. The Respondent acknowledged that he had an Official Department Interview with respect to this incident. He said that he truthfully answered every question asked. The Respondent was read questions and answers from his interview:

Q: Maybe you can explain in your way what happened.

A: I may—inform to Sergeant [REDACTED] that I had to go to the bathroom...

Q: ...You were also asked, oh, so the Sergeant said—gave you the assignment, and that was the only verbal interaction you had with him, to go to the bathroom?

A: Well, he asked me if I had to—he asked me to go to the Borough, and I informed the sergeant that I was on my meal.²

The Respondent stated that he could not recall if he took the 15 minutes left on his meal time before going to deliver the package to the Borough. The Respondent was read questions and answers from his Official Department Interview in which he stated that he took approximately 15 minutes. The Respondent acknowledged that if that is what is stated in his interview that is what he said.

² It was stipulated between the parties that the questions were read accurately from the transcript.

The Respondent acknowledged that he was never joined as a party to § 87(2)(b)'s civil lawsuit. He admitted that he was deposed in the matter, but he was called to a deposition by an attorney from the City's Corporation Counsel. The Respondent was also questioned about his involvement in the bribery case. He testified that he could not recall vouchering a cassette tape in the bribery case that was a recording made by § 87(2)(b). The Respondent was shown documents which he identified as vouchers for a tape, currency and an Automatic Teller Machine receipt. He acknowledged that it was his signature contained on the vouchers. He admitted that seeing the vouchers refreshed his recollection that he vouchered a cassette tape in the bribery case. The Respondent said that he could not recall having any discussion with § 87(2)(b) where he accused him of destroying the cassette tape.

The Respondent denied that in his arrest reports prepared for the bribery case that he mentioned that currency and cosmetics were offered by the civilian. He was shown the arrest reports for the date in question. The Respondent testified that the two arrest reports he reviewed were computer-generated reports that do not refresh his recollection as to whether the civilian offered cosmetics to resolve the accident. He stated that he would need to see the scratch copy of his arrest report to refresh his recollection as to what transpired. He acknowledged that his name was listed as the arresting officer on the two reports. He said that the two arrest reports he reviewed stated that cosmetics were offered to § 87(2)(b) and they did not mention his (the Respondent's) name.

The Respondent denied that he felt he was ordered to make an unlawful arrest in the bribery case. He explained that if he was with another police officer, he did not think he would have arrested the civilian for bribery. However, once he was directed by the supervisor to make the bribery arrest, he had no discretion and had to follow the order and make the arrest. He

denied that he felt he had an obligation to report [REDACTED] to IAB for ordering to make an arrest he disagreed with. During questioning by the Court, the Respondent testified that the arrest reports were not typed by him because he does not know how to type.

FINDINGS AND ANALYSIS

The Respondent is charged in Specification No. 1 with being discourteous to Sergeant S [REDACTED] when he requested the Respondent to take paperwork to the Borough. It is alleged that the Respondent responded in a belligerent and hostile manner when he stated, "I can't do it, I am on meal" and then walked away from the sergeant as he was being spoken to. The Respondent is found Guilty as charged.

Evidence adduced at trial established through several witnesses was that when the Respondent entered the 76 Precinct Station House, Sorrenti asked him to take a package to the Borough. [REDACTED] testified that the Respondent said, "I can't do it, I'm on meal." [REDACTED] testified that he asked the Respondent two or three times to deliver the package and the Respondent replied that he had 15 minutes left on his meal. The issue before this Court is not whether the Respondent was insubordinate in that he failed to comply with a directive, because the Respondent did, in fact, deliver the package, eventually. The issue is whether he was discourteous. As the facts unfolded in this case, the Respondent's response within the structure of a paramilitary organization was not only discourteous, but it was unacceptable.

Schwartz was a sergeant at the Respondent's command at the time of the incident. Schwartz was a friend to the Respondent, or at least an advisor to him, given his position as a SBA delegate. He testified that he informed the Respondent before he arrived at the station house that [REDACTED] was looking for him. He informed him that [REDACTED] needed him to deliver a

package and [REDACTED] thinks he "has him." He advised the Respondent, "Let's just do this, be professional, go in there, take it and go; no questions asked." But the Respondent did not heed the advice. According to Schwartz, the Respondent upon entering the command and hearing the request to deliver the package said he was going to the bathroom and then he would complete the assignment as he walked away. Schwartz described the Respondent's response as "loud, frustrated and disrespectful." This took place at the front desk of the command in the presence of at least three supervisors, Sergeants Schwartz, Burns and [REDACTED]; in addition to any potential civilians in the command and other members of the service who happened to be in the station house at the time.

Cassidy, who was the Commanding Officer of the 76 Precinct, investigated the matter and found the Respondent to be discourteous. He testified that [REDACTED] felt that the Respondent's conduct, particularly in the presence of other supervisors required that some punishment be exacted, even though he was not seeking a harsh punishment.

Harris, the Commanding Officer of the 70 Precinct testified credibly about his dislike for [REDACTED]. He acknowledged that [REDACTED] had issues that needed to be resolved and he failed as a manager to communicate with him when he was the Commanding Officer of the 76 Precinct. His testimony, however, had no bearing on the facts of this case. Whether [REDACTED] was liked or disliked is beside the point. The issue is whether [REDACTED] gave a directive which was responded to in a discourteous manner. Harris acknowledged that he was not assigned to the 76 Precinct on December 17, 2004 the incident date. He admitted that he had no personal knowledge of the incident other than what he learned from speaking to the Respondent. He testified that he never spoke to [REDACTED] about what had transpired. Therefore this Court did not consider his testimony as relevant in the evaluation of the evidence.

Similarly, Chillo, who was a sergeant assigned to the 76 Precinct testified. He testified about the Respondent's view of the bribery arrest, and § 87(2)(b)'s conduct subsequent to the filing of his lawsuit. Yet he also had no personal knowledge of the December 17, 2004 incident either. He testified that he was not present during the incident. Therefore, the Court did not consider his testimony to be relevant.

Smith testified as the Integrity Control Officer at the Respondent's command and that he conducted an investigation in this matter. He informed the Court that following his investigation he determined from a review of the Command Logs that only two sectors were working patrol that day. He also advised that the Respondent was issued a Command Discipline in this matter which the Respondent rejected.

Burns, a witness for the Respondent testified that when the Respondent came into the station house and was told to take the package, his response was that he was still on meal, that he had to use the bathroom and that he needed 15 minutes. Although Burns testified that she did not find the Respondent's response to be discourteous, the Court disagrees. Burns testified that the Respondent was loud, but she said he speaks loud. The Respondent's response, however, was more than just his tone of voice. According to Schwartz, Burns and § 87(2)(b), the Respondent never asked to continue his meal. The Respondent never asked to use the bathroom. The Respondent never asked for 15 minutes, he demanded it. Coincidentally, the 15 minutes was the time left on his meal break. Although the Respondent testified that when he walked into the station house and approached the desk, he asked if he could have 15 more minutes and go to the bathroom, but no witness, Department witness or Respondent witness, corroborated his testimony. The Respondent's act of advising that he was still on meal, that he had to use the

bathroom as he walked away from the desk, coupled with his loud tone of voice made his conduct disrespectful toward [REDACTED]

Accordingly, I find the Respondent Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Police Department on January 3, 1983. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of being discourteous to Sergeant [REDACTED] when [REDACTED] requested that he take paperwork to the Borough and the Respondent responded in a hostile and belligerent manner, "I can't do it, I am on meal" and then walked away from the sergeant as he was being spoken to. In Disciplinary Case No. 76572/00, a Police Administrative Aide was found Guilty of being discourteous. She responded to the sergeant's inquiry concerning a missing person by stating, "My tour is done, you're not paying me and I don't have to listen to you" and exited the precinct. The Trial Commissioner found the Respondent Guilty and recommended the forfeiture of ten vacation days. The Police Commissioner felt that such

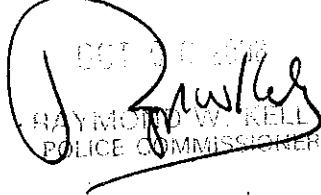
discourteous conduct to a direct supervisor in a public area of the precinct warranted the loss of 15 vacation days. In this instance, the Assistant Department Advocate asked for the forfeiture of 15 vacation days. I concur.

It is recommended that the Respondent forfeit 15 vacation days in this matter.

Respectfully submitted,


Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials

APPROVED
OCT 20 2016

RAYMOND W. KELLY
POLICE COMMISSIONER